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April 14, 2004

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: NeuStar, Inc.; WC Docket No. 92-237

Dear Ms. Dortch:

Since 1999, NeuStar, Inc. (“NeuStar”) has served as the North American Numbering Plan Administrator (“NANPA”). In that role, NeuStar consistently has provided timely, efficient, and neutral administration of the critical numbering resources that make up the North American Numbering Plan (the “Plan” or “NANP”). As NANPA, NeuStar is subject to substantial oversight by the Federal Communications Commission (“FCC” or “Commission”) and the North American Numbering Council (“NANC”). Yet, one aspect of this oversight – the requirement to seek prior FCC approval of *any* change in “overall ownership structure, corporate structure, bylaws, or distribution of equity interests”¹ while it serves as NANPA – severely constrains NeuStar’s ability to effectively conduct business. Given that the agency now has several years of experience with NeuStar, NeuStar asks the Commission to rule that prior approval is not required for certain categories of changes, which by their nature do not affect NeuStar’s neutrality.² In addition, in anticipation of a potential initial public offering (“IPO”), NeuStar seeks agency approval for a transfer of control of the company from the current majority shareholder, a voting trust, to a broad shareholder base.

Background

Since 1999, when it succeeded Lockheed Martin IMS (“Lockheed”) as the NANPA, NeuStar has demonstrated an unwavering commitment to neutrality. Following transfer of the NANPA functions from Lockheed in 1999, NeuStar has carried out a comprehensive corporation-wide effort that involves every employee

¹ Letter from Dorothy Attwood, Chief, Wireline Competition Bureau to Ed Freitag, Esq., NeuStar, Inc., at 3 (dated July 12, 2002) (“*July 12 Letter*”).

² NeuStar has also been designated by the Commission as the Pooling Administrator. The Commission’s Rules impose upon the Pooling Administrator the same neutrality requirements to which the NANPA is subject. *See* 47 C.F.R. § 52.20(d)(1). NeuStar requests that the relief sought in this letter also extend to its requirements and responsibilities as the Pooling Administrator.

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and director of the company to ensure compliance with the Commission's Rules. NeuStar has adopted a Code of Conduct³ that requires, among other things, that: (1) NeuStar will never show preference to any telecommunications service provider ("TSP"); (2) no member of NeuStar's Board of Directors may serve on the Board of any TSP; (3) Warburg Pincus & Co. ("Warburg"), a large investor in NeuStar that has limited TSP interests, will control no more than 40 percent of the NeuStar Board, regardless of its ownership interest; and (4) NeuStar will be subject to quarterly audits of neutrality, the results of which are made available to the public.

Furthermore, every NeuStar employee must participate in annual neutrality training and demonstrate an understanding of and adherence to the company's neutrality obligations and principles. Neutrality is not just a series of procedures for NeuStar. Neutrality is fundamental to the company's business. The numerous neutrality safeguards to which NeuStar adheres help to instill in federal and state regulators, as well as the telecommunications industry at large, confidence that number administration is handled in a manner that adheres to the highest possible standard of neutrality. NeuStar's commitment to this high standard has never been compromised. Further, nothing in this proposal would diminish this commitment to neutrality. In fact, as a public company, NeuStar would be owned by a broader and more diverse group of investors and subject to an extensive range of public filing requirements that would only enhance the company's transparency to regulators, the telecommunications industry, and the public at large.

NeuStar Is Subject to Extensive Requirements to Ensure its Neutrality

As the NANPA, NeuStar is subject to significant restrictions designed to protect its neutrality in the administration of its duties. Part 52 of the Commission's Rules establishes a three-part neutrality test, to which NeuStar must adhere. Under this test, NeuStar may not: (1) be an affiliate⁴ of a TSP⁵ or (2) issue a majority of its

³ The Code of Conduct is attached as Attachment 1.

⁴ Section 52.12 of the Commission's Rules defines an "affiliate" as a "person who controls, is controlled by, or is under the direct or indirect common control with another person." 47 C.F.R. § 52.12 (a)(1)(i). A person controls another person if such person possesses, directly or indirectly: (1) ten percent or more of the total outstanding equity interests in the other person; (2) the power to vote ten percent or more of the securities having ordinary voting power for the election of directors, general partner, or management of such other person; or (3) the power to direct or cause the direction of the management and policies of such other person. 47 C.F.R. § 52.12(a)(1)(i)(A)-(C).

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debt to, or derive a majority of its revenues from, any TSP. Under the third prong of this test, the Commission may determine that NeuStar is or is not subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities, notwithstanding the first two requirements. Part 52 of the Commission's Rules also provides the NANC with the authority to investigate and take action against the NANPA for any perceived undue influence.⁶

In its November 17, 1999 *Warburg Transfer Order*, which approved the transfer of the NANPA function from Lockheed to NeuStar, the Commission imposed additional restrictions on NeuStar while it serves as the NANPA to insulate its NANP administration from the limited TSP interests of NeuStar's main investor, Warburg.⁷ These additional restrictions included the establishment of a voting trust that initially held and currently owns a majority of NeuStar's equity (the trust was designed as a mechanism to protect NeuStar's neutrality because of Warburg's TSP interests) (the "Voting Trust"). In the *Warburg Transfer Order*, NeuStar also agreed to abide by a Code of Conduct that required the company to, among other things, submit to a quarterly audit of its neutrality.

Subsequently, the FCC Wireline Competition Bureau ("Bureau") issued a letter further clarifying the requirements on NeuStar while it serves as the NANPA. Specifically, the Bureau stated that "NeuStar must seek and get prior approval for changes to its organization structure, the voting trust, or the Board [of Directors], even if NeuStar believes that such changes will not result in a violation of the Commission's neutrality rules or the *Warburg Transfer Order*."⁸ The Bureau

(Continued . . .)

⁵ Although Section 52.5 of the Commission's Rules does not define TSP directly, it does define "telecommunications service," and "service provider." "Service provider" is defined as a "telecommunications carrier or other entity that receives numbering resources from the NANPA, a Pooling Administrator or a telecommunications carrier for the purpose of providing or establishing telecommunications service." 47 C.F.R. § 52.5(i). "Telecommunications service" is in turn defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 C.F.R. § 52.5(h).

⁶ 47 C.F.R. § 52.12(a)(1)(iii).

⁷ Request of Lockheed Martin Corporation and Warburg, Pincus & Co., 14 FCC Rcd 19792 (Nov. 17, 1999) ("*Warburg Transfer Order*").

⁸ *July 12 Letter* at 3.

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elaborated that this prior approval requirement applies to any “changes in [NeuStar’s] overall ownership structure, corporate structure, bylaws, or distribution of equity interests.”⁹

The Expansiveness of the Bureau’s Prior Approval Requirement Inhibits NeuStar’s Ability to Operate Effectively in the Marketplace.

NeuStar understands the importance of scrupulously maintaining its neutrality while it serves as the NANPA. Neutrality has been, and will continue to be, the primary core value of its business. The company thus has no objection to the requirements in Section 52.12 of the Commission’s Rules or the tenets of the Code of Conduct adopted in the *Warburg Transfer Order*, including the quarterly neutrality audit. However, the expansiveness of the prior-approval requirement imposed by the *Warburg Transfer Order*, as clarified by the *July 12 Letter*, has unreasonably and unduly constrained the company, impeding it from engaging in activities that would not affect its neutrality.

The broad pre-approval requirement introduces a level of regulatory uncertainty that adds significant costs and delays to routine business activities. It thus imposes singular burdens on NeuStar’s ability to nimbly pursue business opportunities and attract new investment. Similarly, restrictions on the company’s ability to make organizational changes, such as to the make-up of the Board of Directors, or acquire non-TSP lines of business, deny NeuStar the flexibility required to achieve desirable organizational and operational efficiencies. In addition, requiring agency pre-approval for changes to NeuStar’s ownership, even the sale of one share of stock, prevents NeuStar from becoming a publicly owned company.¹⁰ In today’s capital markets, it would be impossible for a public company to obtain prior approval before any share of stock is traded. Yet, the Commission clearly did not intend to prohibit the NANPA from being a public company. NeuStar’s predecessor, in fact, was a publicly traded company. In addition, we understand that several of NeuStar’s competitors for the current NANPA contract were also public companies.

⁹ *Id.*

¹⁰ The *July 12 Letter* exempts from the prior approval requirement only equity transactions pursuant to an “employee share option plan.” *July 12 Letter* at 2 n.4.

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The Commission is also burdened by the overly broad scope of the prior approval requirement. In the *Warburg Transfer Order*, the Commission stated that the protections were intended partly to “ensure that the NANPA is able to comply with its obligations without extensive and constant Commission oversight.”¹¹ However, the broad scope of the prior approval requirement forces the Commission unnecessarily to expend scarce administrative time and resources in overseeing NeuStar’s every action, even where such activity does not impact the company’s neutrality.

NeuStar Requests that Prior Approval Not Be Required for Certain Types of Changes that Do Not Affect Neutrality.

In order to provide NeuStar with the flexibility it needs to conduct its business effectively, while maintaining adequate safeguards to ensure neutrality, NeuStar requests that the Commission rule that prior approval is not required for certain types of changes and transactions not impacting neutrality.

Section 52.12 of the Commission’s Rules and the terms of the Code of Conduct make clear that the Commission’s concern with respect to the NANPA’s neutrality focuses on relationships between the NANPA and TSPs. Indeed, these requirements directly prohibit the NANPA from having more than a specified level of TSP ownership or other TSP relationships, and require stringent insulation of any TSP interests where they exist. Accordingly, for changes where no TSP interests are involved, where TSP interests are kept below a defined *de minimis* level, or where TSP interests are insulated consistent with FCC requirements, by definition, no neutrality concerns should arise. These are the types of changes that NeuStar requests no longer be subject to prior agency approval.

The changes NeuStar believes should not be subject to prior approval fall into three general categories: (1) corporate changes that dilute or do not increase the rights of any entity affiliated with a TSP; (2) transactions that dilute or do not increase any interests of a TSP or a TSP affiliate in NeuStar; and (3) transactions that permit NeuStar to become a public company (including an IPO) and subsequent sales of NeuStar equity, subject to several limitations on TSP ownership. Specific types of changes falling into these general categories are detailed below:

¹¹ *Warburg Transfer Order*, 14 FCC Rcd at 19808-09.

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1. Corporate changes that dilute or do not increase the rights of a TSP or an affiliate¹² of a TSP.
 - (a) Changes to the Board's structure or size, provided that a majority of the directors are unaffiliated with Warburg¹³ and that no director is affiliated with a TSP.¹⁴
 - (b) Changes to NeuStar's bylaws, charter or securities provided that such changes do not provide to an entity that is a TSP or an affiliate of a TSP any rights that are not enjoyed by other holders of the class of securities held by such entity.
 - (c) Changes to corporate structure, including reorganization into one or more subsidiaries or dispositions of subsidiaries.
2. Transactions that dilute or do not increase any interests in NeuStar of a TSP or an affiliate of a TSP.
 - (a) NeuStar may issue indebtedness to any entity, so long as the level of indebtedness is consistent with Section 52.12(a)(1)(ii) of the Commission's Rules.
 - (b) NeuStar may acquire, acquire an equity interest in, or provide debt financing to, any entity that is not a TSP or an affiliate of a TSP, consistent with Section 52.12(a)(1)(i) of the Commission's Rules.
 - (c) Pre-IPO, transactions in NeuStar equity so long as:
 - (i) No entity that is a TSP or an affiliate of a TSP acquires any equity interest in NeuStar;

¹² For purposes of these categories of changes, "affiliate" is defined as in Section 52.12(a)(1)(i) of the Commission's Rules. 47 C.F.R. § 52.12(a)(1)(i).

¹³ As mentioned above, under the Code of Conduct, no more than 40 percent of NeuStar's board may be affiliated with Warburg. This limitation would remain in place.

¹⁴ For purposes of this particular category, a director would be "affiliated with" Warburg or a TSP if the director is employed by Warburg or a TSP, is an officer or director of Warburg or a TSP, or owns 10 percent or more of the equity of Warburg or a TSP.

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- (ii) Any entity's equity interest in NeuStar in excess of 9.9 percent shall be placed in the Voting Trust;
 - (iii) The percentage equity ownership of the Voting Trust remains above 50 percent; *and*
 - (iv) Warburg's percentage equity interest in NeuStar is diluted or not disproportionately increased.
- 3. Transactions that permit NeuStar to become a public company, including an IPO, and subsequent sales of NeuStar equity, subject to the limitations on TSP ownership set forth below.
 - (a) Distribution of equity in an IPO where no entity¹⁵ will acquire more than 9.9 percent of the outstanding equity of NeuStar as a result of such offering.
 - (b) Post-IPO, trading of NeuStar equity consistent with the following conditions:
 - (i) Any entity acquiring beneficial ownership of NeuStar equity of 9.9 percent or more shall be required to certify to NeuStar (within 10 business days of the time it is required under Securities and Exchange Commission ("SEC") rules to notify NeuStar of its ownership interest) whether it is a TSP or an affiliate of a TSP;
 - (ii) Any such entity shall not be entitled to vote any equity in excess of 9.9 percent until it provides to NeuStar certification that it is not a TSP or an affiliate of a TSP. Such entity shall be required to divest such equity above 9.9 percent or place such excess equity in the Voting Trust, if necessary to enforce this requirement;

¹⁵ For purposes of categories 3(a) and (b), "entity" is defined as a "person" under Section 13(d)(3) of the Securities Exchange Act of 1934, and thus includes "two or more persons acting as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of securities of an issuer." 15 U.S.C. § 78(m)(d)(3).

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- (iii) Any entity beneficially owning 9.9 percent or more of NeuStar equity shall be required to report to NeuStar any change that affects the validity of its certification within 10 business days of the change's occurrence; *and*
- (iv) A majority of the board of directors shall consist of independent directors, as defined by NASDAQ or NYSE.

NeuStar proposes that prior approval no longer be required for the above types of changes and transactions. Prior agency approval would continue to be required for all other changes within the existing scope of the prior approval requirement.

All Other Oversight Mechanisms Would Remain in Place – NeuStar Requests No Changes of Section 52.12 or the Code of Conduct.

Removing these categories of changes from the prior approval requirement would in no way alter the many other neutrality safeguards and oversight requirements imposed by the Commission. Indeed, the following existing safeguards, among others, would remain in place:

1. The affiliate limitations of Section 52.12(a)(1)(i) of the Commission's Rules;
2. The revenue/debt limitations of Section 52.12(a)(1)(ii) of the Commission's Rules;
3. The NANC's authority to investigate NeuStar's NANP neutrality;
4. NeuStar's obligation to submit to quarterly neutrality audits, with the audit results going to both the NANC and the FCC; and
5. NeuStar's obligation to comply with its Code of Conduct.

The above neutrality safeguards have worked effectively in the past to preserve NeuStar's neutrality. Their continued applicability will adequately preserve the Commission's ability to oversee NeuStar's administration of the NANP.

Post-IPO, Additional Transparency Requirements Will Apply to NeuStar

As suggested above, NeuStar is seriously contemplating holding an IPO and becoming a public company. NeuStar post-IPO would be subject to a whole spectrum of additional disclosure requirements that would provide added

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transparency with respect to the company's structure and operations. These disclosure requirements will enable the Commission, the NANC and interested parties to further monitor NeuStar's neutrality. For example, NeuStar post-IPO will be subject to requirements to file a Form 8K with the SEC within four business days after the occurrence of material events such as:

1. Entry into or termination of a material agreement not in the ordinary course of business.
2. Acquisition or disposition of a significant amount of assets other than in the ordinary course of business.
3. Public announcements or releases of material non-public information regarding results of operations or financial condition.
4. Creation or acceleration of a material direct financial obligation or a material obligation under an off-balance sheet arrangement.
5. Incurring material costs associated with exit or disposal activities.
6. Material charges for impairments of assets.
7. Unregistered sales of equity securities of more than 1 percent of outstanding securities.
8. Material modifications to rights of security holders.
9. Changes in control.
10. Departure of directors or principal officers; election of directors; appointment of principal officers.
11. Amendments to articles of incorporation or bylaws.
12. Amendments to code of ethics, or waiver of a provision of the code of ethics, that apply to an executive officer.

Post-IPO, NeuStar would also be subject to additional requirements for periodic disclosure reports, including the filing of an SEC Form 10-Q quarterly report, an SEC 10-K annual report, and proxy statements. NeuStar would commit to providing copies of such documents to the FCC within 5 business days of their filing with the SEC.

In addition, shareholders in NeuStar post-IPO who beneficially own 5 percent or more of a class of the company's equity would themselves be required to submit to the SEC (and copy to NeuStar) Schedules 13-D and 13-G that disclose their equity ownership. NeuStar would commit to providing copies of such forms to the FCC within five business days of receiving them. Accordingly, these additional disclosure requirements to which NeuStar and its shareholders would be subject

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post-IPO provide the Commission and the public with added ability to monitor and be assured of NeuStar's continued neutrality.

NeuStar Seeks Authority for Transfer of Control to a Broad Shareholder Base

As a consequence of an IPO, NeuStar anticipates that the level of ownership of its majority shareholder, the Voting Trust, could be diluted below 50 percent. At that time, no other shareholder would acquire a 50 percent or greater interest. Rather, a majority of the shares would be dispersed among a broad shareholder base.

Accordingly, NeuStar seeks Commission approval to transfer control of the company from the Voting Trust to the shareholders of NeuStar, collectively. Such a transfer of control would clearly serve the public interest. By dispersing voting power among a broader shareholder base, NeuStar's neutrality is further enhanced because the influence of any one entity is diminished. Moreover, such a transfer would have the effect of further diluting Warburg's and any other large investor's ownership interest as well as any potential influence any remaining TSP interests held by Warburg or other investors might have. In addition, as noted in the previous section, with the transfer NeuStar would become a public company subject to the additional transparency requirements of such companies. These transparency requirements would provide the Commission and the public with additional oversight and transparency. For these reasons, the transfer would surely serve the public interest.

Conclusion

NeuStar understands and fully supports the need for the NANPA to scrupulously maintain its neutrality. NeuStar's request that prior agency approval no longer be required for certain categories of changes would in no way compromise this important goal. These limited types of changes, by definition, do not raise neutrality concerns. Further, all other neutrality safeguards, including a neutrality audit every three months, would remain in place. While the requested relief would not affect NeuStar's neutrality, it would importantly provide NeuStar with the flexibility it needs to continue to grow and develop, and to operate effectively. Finally, the requested authority to transfer control of NeuStar would serve the public interest by allowing an IPO that further broadens NeuStar's

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shareholder base. On behalf of NeuStar, I respectfully request that the Commission promptly grant this request.

Sincerely,

/s/

Richard E. Wiley
Counsel for NeuStar, Inc.

Duplicate original delivered to:

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein

cc: Mr. John A. Rogovin
Mr. William Maher
Mr. Andrew S. Fishel

NEUSTAR CODE OF CONDUCT

1. NeuStar will never, directly or indirectly, show any preference or provide any special consideration to any company that is a telecommunications service provider, which term as used herein shall have the meaning set forth in the Telecommunications Act of 1996.
2. No shareholder of NeuStar shall have access to user data or proprietary information of the telecommunications service providers served by NeuStar (other than access of employee-shareholders of NeuStar that is incident to the performance of NANPA and LNPA duties).
3. Shareholders of NeuStar will ensure that no user data or proprietary information from any telecommunications service provider is disclosed to NeuStar (other than the sharing of data incident to the performance of NANPA and LNPA duties).
4. Confidential information about NeuStar's business services and operations will not be shared with employees of any telecommunications service provider. NeuStar shareholders will guard their knowledge and information about NeuStar's operations as they would their own proprietary information.
5. No person employed by, or serving in the management of any shareholder of NeuStar will be directly involved in the day-to-day operations of NeuStar. No employees of any company that is a telecommunications service provider will be simultaneously employed (full-time or parttime) by NeuStar.
6. Warburg Pincus will not control more than 40% of NeuStar's Board.
7. No member of NeuStar's board will simultaneously serve on the board of a telecommunications services provider.
8. No employee of NeuStar will hold any interest, financial or otherwise, in any company that would violate the neutrality requirements of the FCC or the NPAC Contractor Services Agreements (the Master Agreements).
9. NeuStar will hire an independent party to conduct a neutrality review of NeuStar, ensuring that NeuStar and its shareholders comply with all the provisions of this Code of Conduct. The neutrality analyst will be mutually agreed upon by NeuStar, the FCC, NANC and the LLCs. The neutrality review will be conducted quarterly. NeuStar will pay the expenses of conducting the review. NeuStar will provide the analyst with reasonable access to information and records necessary to complete the review. The results of the review will be provided to the LLCs, to the North American Numbering Council and to the FCC and shall be deemed to be confidential and proprietary information of NeuStar and its shareholders.